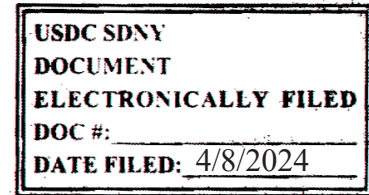


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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GARY KEMP,

Petitioner,

20-CV-09121 (RA)(SN)

-against-

ORDER

JOSEPH NOETH,

Respondent.

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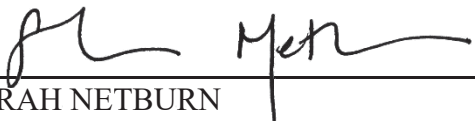
SARAH NETBURN, United States Magistrate Judge:

Petitioner has requested that the Court stay his habeas case so that he can exhaust his claims in state court via a § 440.10 motion. ECF No. 72. The New York County Supreme Court, however, has already denied a § 440.10 motion filed by Petitioner. Accordingly, the Court decided on December 13, 2023, that “it is no longer reasonable to delay this case” and lifted a two-year stay. ECF No. 58. For the same reasons explained in the Court’s December 13, 2023 Order, Petitioner’s renewed request for a stay is DENIED.

Petitioner had been ordered to file a letter by April 1, 2024, confirming: “(1) whether the January 17, 2024 petition is the petition he would like the Court to consider when deciding on his habeas claims; and (2) whether he wants the Court to also consider the unexhausted claims raised in § 440.10 vacatur motion as a supplement (or addition) to the January 17, 2024 petition.” ECF No. 70. To date, Petitioner has not complied with that Order. Accordingly, the Court plans to consider the claims in Petitioner’s January 17, 2024 petition and plans to disregard Petitioner’s improperly filed February 27, 2024 § 440.10 motion. If the Court’s approach is inconsistent with Petitioner’s intentions, Petitioner shall file a letter by April 22, 2024, clarifying, with specificity,

which claims he wants the Court to consider. If Petitioner does not file a clarifying letter, or if Petitioner files another letter not responsive to the Court's Order, Respondent shall file its opposition to the January 17, 2024 petition by May 22, 2024.

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

DATED: April 8, 2024
New York, New York